

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

ATHENEX, INC., et al.,

Debtors.¹

Chapter 11

Case No. 23-90295 (DRJ)

(Jointly Administered)

**ORDER APPROVING ORASCOVERY STALKING HORSE BIDDER AND
PAYMENT OF BID PROTECTIONS UNDER ORDER APPROVING (A) BID
PROCEDURES; (B) THE FORM AND MANNER OF NOTICE; (C) THE PROCEDURES
FOR DETERMINING CURE AMOUNTS FOR EXECUTORY CONTRACTS AND
UNEXPIRED LEASES; AND (D) GRANTING RELATED RELIEF**

(Related Docket Nos. 113 & _____)

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”), (a) approving the designation of C-MER Specialty Group Limited (“C-MER”) as a Stalking Horse Bidder under the terms of the Bid Procedures Order [Docket No. 113] with respect to the Orascovery Business; (b) authorizing Debtors Athenex R&D LLC (“R&D”) and Athenex, Inc. (“Athenex”) to enter into that certain *Stalking Horse Asset Purchase Agreement*, dated June 6, 2023 (the “Stalking Horse Agreement”), a copy of which is attached to the Motion as **EXHIBIT A**; (c) in connection with the Stalking Horse Agreement, authorizing the payment of (i) an expense reimbursement for the reasonable, documented out-of-pocket expenses incurred by C-MER in connection with the Stalking Horse Agreement in an aggregate amount not to exceed \$25,000, and (ii) a breakup fee of \$75,000 to C-

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://dm.epiq11.com/athenex>. The location of Athenex, Inc.’s principal place of business and the Debtors’ service address in these chapter 11 cases is 1001 Main Street, Suite 600, Buffalo, NY 14203.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

MER, payable only from the proceeds of a Sale with a Qualified Bidder other than C-MER consistent with the terms of the Bid Procedures Order (collectively, the “Bid Protections”); and (d) granting related relief; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having reviewed any evidence in support of the Motion; and the Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before the Court (the “Hearing”); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and any objections to the Motion having been withdrawn with prejudice or overruled on the merits at the Hearing; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

THE COURT FINDS:³

A. Jurisdiction and Venue. The Court has jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334, and venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

B. Bases for Relief. The bases for the relief requested in the Motion are sections 105, 363, 503, and 507 of the Bankruptcy Code and Bankruptcy Rules 6004, and Bankruptcy Local Rule 9013-1.

³ The findings of fact and conclusions of law herein constitute the Court’s findings of fact and conclusions of law for the purposes of Bankruptcy Rule 7052 made applicable pursuant to Bankruptcy Rule 9014. To the extent any findings of facts are conclusions of law, they are adopted as such.

C. Notice of the Bidding Procedures Motion. Good and sufficient notice of the Motion and the relief sought therein has been given under the circumstances, and no other or further notice is required except as set forth herein. The notice of the Motion and of the Hearing is reasonable and sufficient in light of the circumstances and nature of the relief requested in the Motion, and no other or further notice of the Motion or the Hearing is necessary, including the filing of any further notice of Stalking Horse Bidder under the Bid Procedures Order. A reasonable and fair opportunity to object to the Motion and the relief granted in this Order has been afforded under the circumstances.

D. Bid Protections. The Bid Protections, (i) are an actual and necessary cost and expense of preserving the Debtors' estates within the meaning of sections 503(b) and 507(a)(2) of the Bankruptcy Code, (ii) are commensurate to the real and material benefits conferred upon the estates by C-MER, and (iii) are fair, reasonable, and appropriate, including in light of the commitments that have been made and the efforts that have been and will be expended by the C-MER. The Bid Protections are necessary to induce C-MER to pursue the Sale and to be bound by the Stalking Horse Agreement.

IT IS HEREBY ORDERED THAT:

1. The Motion is hereby **GRANTED**, to the extent set forth herein.
2. The Designation Deadline under the Bid Procedures Order is extended to allow the designation of C-MER as the Stalking Horse Bidder for the Orascovery Business on the terms of the Stalking Horse Agreement.
3. Debtors R&D and Athenex are authorized to enter into and perform under the terms of the Stalking Horse Agreement consistent with the terms of the Bid Procedures Order, including the payment of the Bid Protections, which are approved. The Debtors are authorized without

further Court action to pay any Bid Protections to C-MER payable only from the proceeds of a Sale with a Qualified Bidder other than C-MER consistent with the terms of the Bid Procedures Order.

4. The Debtors are authorized to take all actions necessary or appropriate to effectuate the relief granted pursuant to this Order in accordance with the Motion.

5. Notice of the Motion satisfies the requirements of Bankruptcy Rule 6004(a).

6. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

7. This Court retains exclusive jurisdiction and power with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: _____, 2023

DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE